

House Bill 1

By: Representative Franklin of the 43<sup>rd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend the Official Code of Georgia Annotated so as to provide that prenatal murder shall  
2 be unlawful in all events and to remove numerous references to such procedures; to amend  
3 Title 16, relating to crimes and offenses, so as to make certain findings of fact; to define  
4 certain terms; to provide that any prenatal murder shall be unlawful; to provide a penalty; to  
5 repeal certain exceptions to certain offenses; to provide for severability; to provide an  
6 effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
10 amended by striking Article 5, relating to abortion, in its entirety and inserting in lieu thereof  
11 the following:

12 "ARTICLE 5

13 16-12-140.

14 (a) The State of Georgia has the duty to protect all innocent life from the moment of  
15 conception until natural death. We know that life begins at conception. After nearly four  
16 decades of legal human prenatal murder, it is now abundantly clear that the practice has  
17 negatively impacted the people of this state in many ways, including economic, health,  
18 physical, psychological, emotional, and medical well-being. These, too, are areas of  
19 legitimate concern and duty of this state. The General Assembly therefore makes the  
20 following findings of fact:

21 (1) A fetus is a person for all purposes under the laws of this state from the moment of  
22 conception;

23 (2) The Georgia Constitution, at Article I, Section I, Paragraph II, provides: 'Protection  
24 to person and property is the paramount duty of government and shall be impartial and

25 complete. No person shall be denied the equal protection of the laws.' Because a fetus  
 26 is a person, constitutional protection attaches at the moment of conception. It is therefore  
 27 the duty of the General Assembly to protect the innocent life that is being taken;  
 28 (3) Justice Blackmun, writing for the majority in *Roe v. Wade*, 410 U.S. 113 (1973),  
 29 wrote: 'when those trained in the respective disciplines of medicine, philosophy, and  
 30 theology are unable to arrive at any consensus, the judiciary, at this point in the  
 31 development of man's knowledge, is not in a position to speculate as to the answer [to the  
 32 question of when life begins].'  
 33 (4) The General Assembly knows the answer to that difficult question, and that answer  
 34 is life begins at the moment of conception;  
 35 (5) The Supreme Court's inability to determine what is human life cannot legitimately  
 36 serve to prohibit Georgia from fulfilling its constitutional mandate to protect the lives of  
 37 its citizens by prosecuting crimes against said person;  
 38 (6) The United States Congress has reserved to itself 'all legislative powers herein vested'  
 39 according to Article I, Section I of the Constitution of the United States;  
 40 (7) 'Herein vested' to the United States Congress applies to only five crimes: (1)  
 41 counterfeiting, (2) piracy, (3) felonies on the high seas, (4) offenses against the law of  
 42 nations, and (5) treason; according to Article I, Section VIII and Article III, Section III  
 43 of the Constitution of the United States;  
 44 (8) Murder is not counterfeiting, piracy, felony on the high seas, an offense against the  
 45 law of nations, or treason;  
 46 (9) Georgia has, therefore, reserved to itself exclusive jurisdiction over the definition and  
 47 punishment of murder under Amendment X of the Constitution of the United States;  
 48 (10) The United States judiciary only has authority to hear cases or controversies 'arising  
 49 under this Constitution' and then only if 'affecting ambassadors, other public ministers  
 50 and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which  
 51 the United States shall be a Party; to controversies between two or more states; between  
 52 a state and citizens of another state; between citizens of different states; between citizens  
 53 of the same state claiming lands under grants of different states, and between a state, or  
 54 the citizens thereof, and foreign states, citizens or subjects';  
 55 (11) The definition and prosecution of murder within Georgia to protect its own prenatal  
 56 citizens affects neither an ambassador nor other public minister or consul; is not a case  
 57 of admiralty and maritime jurisdiction; is not a controversy to which the United States  
 58 shall be a party; is not a controversy between two or more states, nor between the state  
 59 of Georgia and the citizens of another state; is not a controversy between a citizen of  
 60 Georgia and a citizen of a different state; is not related to citizens of Georgia claiming

61 lands under grants of different states; and is not a case between Georgia or its citizens and  
62 another state and its citizens;

63 (12) The United States Supreme Court had no jurisdiction to hear or decide the case of  
64 Roe v. Wade or any other case pertaining to a state's punishment of the crime of prenatal  
65 murder;

66 (13) As it had no jurisdiction to hear the case, certainly the United States Supreme Court  
67 lacked the authority to pass, or order all states to strike or refuse to enforce, a law that is  
68 outside of its subject matter or federal jurisdiction;

69 (14) Even if the United States Supreme Court had jurisdiction, its authority is limited to  
70 the case or controversy before it, and its opinion extends no further than between the  
71 parties to the case or controversy;

72 (15) It is a foundational principle of our constitutional republic, and 'a proposition too  
73 plain to be contested, that the Constitution controls any legislative act repugnant to it'; 'a  
74 law repugnant to the Constitution is void' and even 'the courts ... are bound by that  
75 instrument'; *Marbury v. Madison*, 1 U.S. 137, 177 and 180 (1803);

76 (16) As 'an act of the legislature, repugnant to the Constitution, is void,' does not 'bind  
77 the courts, and oblige them to give it effect,' *Marbury* at 177, an act of the United States  
78 Supreme Court, repugnant to the Constitution, is void and does not bind the state or  
79 oblige it to give it effect;

80 (17) Georgia hereby unequivocally expresses its firm resolution to maintain and defend  
81 the Constitution of the United States against every aggression, either foreign or domestic,  
82 and most solemnly declares a warm attachment to the Union of the states and seeks its  
83 preservation and continuation;

84 (18) It is 'for this end it is their duty to watch over and oppose every infraction of those  
85 principles which constitute the only basis of that Union'; *Virginia Resolutions of 1798-99*;

86 (19) However, denying to a state the right to define and punish a crime not specified in  
87 the United States Constitution is a *per se* legislative act;

88 (20) The nullification of a state's properly promulgated laws is specifically delineated as  
89 an offense committed by King George III against the states, for which separation became  
90 necessary; *The Unanimous Declaration of the thirteen united States of America*;

91 (21) Compliance with, and continuation of, a fiat determination of the Supreme Court  
92 from nearly 40 years ago will cause the basis of this Union, and eventually the Union  
93 itself, to fall;

94 (22) Georgia was not a party to the suit in *Roe v. Wade*, and is not bound by a decision  
95 in which it did not have right of participation;

96 (23) Georgia is not restricted in its duty to its citizens due to the failure of the State of  
97 Texas to properly plead 'lack of subject matter jurisdiction';

98 (24) As the United States Constitution confers to no federal branch either the authority  
 99 over the definition or prosecution of murder, or the power to nullify the laws of a state  
 100 that do the same, *Roe v. Wade* is 'no law,' is a nullity, and carries no legal effect in  
 101 Georgia;

102 (25) The act of prenatal murder is murder and conspiracy to commit murder *per se*;

103 (26) The act of prenatal murder has caused a significant reduction in the number of  
 104 citizens in this state that would serve as workers, entrepreneurs, teachers, employees, and  
 105 employers that would have significantly contributed to the prosperity and continuation  
 106 of this state; and

107 (27) The failure to prosecute a violation of this Code section is a violation of the  
 108 obligation of this state to provide all of its citizens with an equal protection of the laws.

109 (b) As used in this Code section, the term:

110 (1) 'Fetus' means a person at any point of development from and including the moment  
 111 of conception through the moment of birth. Such term includes all medical or popular  
 112 designations of an unborn child from the moment of conception such as conceptus,  
 113 zygote, embryo, homunculus, and similar terms.

114 (2) 'Prenatal murder' means the intentional removal of a fetus from a woman with an  
 115 intention other than to produce a live birth or to remove a dead fetus; provided, however,  
 116 that if a physician makes a medically justified effort to save the lives of both the mother  
 117 and the fetus and the fetus does not survive, such action shall not be prenatal murder.  
 118 Such term does not include a naturally occurring expulsion of a fetus known medically  
 119 as a 'spontaneous abortion' and popularly as a 'miscarriage' so long as there is no human  
 120 involvement whatsoever in the causation of such event.

121 (c) The act of prenatal murder is contrary to the health and well-being of the citizens of  
 122 this state and to the state itself and is illegal in this state in all instances.

123 (d) Any person committing prenatal murder in this state shall be guilty of a felony and,  
 124 upon conviction, shall be punished as provided in subsection (d) of Code Section 16-5-1.  
 125 The license of any physician indicted for an alleged violation of this Code section shall be  
 126 suspended until resolution of the matter. The license of any physician convicted of a  
 127 violation of this Code section shall be permanently revoked. The provisions of this Code  
 128 section shall be in addition to any other provisions relating to the killing of a fetus or any  
 129 other person."

130 **SECTION 2.1.**

131 Said title is further amended in subsection (h) of Code Section 16-5-20, relating to simple  
 132 assault, by striking current paragraph (1) and by redesignating current paragraphs (2) and (3)  
 133 as paragraphs (1) and (2), respectively.

134 **SECTION 2.2.**

135 Said title is further amended in subsection (d) of Code Section 16-5-28, relating to assault  
 136 on an unborn child, by striking current paragraph (1) and by redesignating current paragraphs  
 137 (2) and (3) as paragraphs (1) and (2), respectively.

138 **SECTION 2.3.**

139 Said title is further amended in subsection (d) of Code Section 16-5-29, relating to battery  
 140 on an unborn child, by striking current paragraph (1) and by redesignating current paragraphs  
 141 (2) and (3) as paragraphs (1) and (2), respectively.

142 **SECTION 2.4.**

143 Said title is further amended in subsection (f) of Code Section 16-5-80, relating to feticide,  
 144 voluntary manslaughter of an unborn child, and penalties, by striking current paragraph (1)  
 145 and by redesignating current paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

146 **SECTION 2.5.**

147 Chapter 11 of Title 15, relating to juvenile proceedings, is amended in Code Section  
 148 15-11-28, relating to jurisdiction of the juvenile courts, by adding "or" at the end of  
 149 subparagraph (a)(2)(C), by striking current subparagraph (a)(2)(D), and by redesignating  
 150 current subparagraph (a)(2)(E) as subparagraph (a)(2)(D).

151 **SECTION 2.6.**

152 Said chapter is further amended by repealing in its entirety Article 3, the "Parental  
 153 Notification Act," and designating said article as reserved.

154 **SECTION 2.7.**

155 Code Section 20-2-773, relating to restrictions on student health services and utilization of  
 156 state funds, is amended by revising subsection (a) as follows:

157 "(a) No facility operated on public school property or operated by a public school district  
 158 and no employee of any such facility acting within the scope of such employee's  
 159 employment shall ~~provide any of the following health services to public school students:~~  
 160 distribute contraceptives.

161 ~~(1) Distribution of contraceptives;~~

162 ~~(2) Performance of abortions;~~

163 ~~(3) Referrals for abortion; or~~

164 ~~(4) Dispensing abortifacients."~~

165 **SECTION 2.8.**

166 Title 31, relating to health, is amended in Code Section 31-2-1, relating to the duty,  
167 functions, and powers of the Department of Human Resources, by adding "and" at the end  
168 of paragraph (11), by striking current paragraph (12), and by redesignating current paragraph  
169 (13) as paragraph (12).

170 **SECTION 2.9.**

171 Said title is further amended in paragraph (4) of Code Section 31-7-1, relating to definitions,  
172 by striking current subparagraph (B) and by redesignating current subparagraphs (C) through  
173 (G) as subparagraphs (B) through (F), respectively.

174 **SECTION 2.10.**

175 Said title is further amended by revising subsection (a) of Code Section 31-7-9, relating to  
176 reports by physicians and other personnel of nonaccidental injuries to patients and immunity  
177 from liability, as follows:

178 "(a) As used in this Code section, the term 'medical facility' includes, without being limited  
179 to, an ambulatory surgical treatment center defined in subparagraph ~~(D)~~ (C) of paragraph  
180 (1) of Code Section 31-7-1."

181 **SECTION 2.11.**

182 Said title is further amended in Code Section 31-9-5, relating to the applicability of the  
183 "Georgia Medical Consent Law" to abortion and sterilization procedures, by striking the  
184 words "abortion and" and "procedures".

185 **SECTION 2.12.**

186 Said title is further amended by repealing in its entirety Chapter 9A, the "Woman's Right to  
187 Know Act."

188 **SECTION 2.13.**

189 Said title is further amended by revising Code Section 31-10-1, relating to definitions relative  
190 to vital records, by deleting the words "product of human conception" and replacing them  
191 with "prenatal human person" in paragraphs (4), (9), and (15); by deleting the words  
192 "induced termination of pregnancy" and replacing them with "prenatal murder" in paragraphs  
193 (7) and (20); and by deleting the words "an induced termination of pregnancy" and replacing  
194 them with "a prenatal murder" in paragraph (15).

195 **SECTION 2.14.**

196 Said title is further amended by revising subsection (a) of Code Section 31-10-18, relating  
197 to registration of spontaneous fetal deaths, as follows:

198 "(a) A report of spontaneous fetal death for each spontaneous fetal death which occurs in  
199 this state shall be filed with the local registrar of the county in which the delivery occurred  
200 within 72 hours after such delivery in accordance with this Code section unless the place  
201 of fetal death is unknown, in which case a fetal death certificate shall be filed in the county  
202 in which the dead fetus was found within 72 hours after such occurrence. ~~All induced~~  
203 ~~terminations of pregnancy shall be reported in the manner prescribed in Code Section~~  
204 ~~31-10-19.~~ Preparation and filing of reports of spontaneous fetal death shall be as follows:

205 (1) When a dead fetus is delivered in an institution, the person in charge of the institution  
206 or that person's designated representative shall prepare and file the report;

207 (2) When a dead fetus is delivered outside an institution, the physician in attendance at  
208 or immediately after delivery shall prepare and file the report;

209 (3) When a spontaneous fetal death required to be reported by this Code section occurs  
210 without medical attendance at or immediately after the delivery or when inquiry is  
211 required by Article 2 of Chapter 16 of Title 45, the 'Georgia Death Investigation Act,' the  
212 proper investigating official shall investigate the cause of fetal death and shall prepare  
213 and file the report within 30 days; and

214 (4) When a spontaneous fetal death occurs in a moving conveyance and the fetus is first  
215 removed from the conveyance in this state or when a dead fetus is found in this state and  
216 the place of fetal death is unknown, the fetal death shall be reported in this state. The  
217 place where the fetus was first removed from the conveyance or the dead fetus was found  
218 shall be considered the place of fetal death."

219 **SECTION 2.15.**

220 Said title is further amended by repealing and reserving Code Section 31-10-19, relating to  
221 reporting of termination of pregnancy.

222 **SECTION 2.16.**

223 Said title is further amended by revising subsection (a) of code Section 31-10-28, relating to  
224 institutions to keep vital records, as follows:

225 "(a) Every person in charge of an institution shall keep a record of personal data  
226 concerning each person admitted or confined to such institution. This record shall include  
227 such information as required for the certificates of birth and death and the reports of  
228 spontaneous fetal death ~~and induced termination of pregnancy~~ required by this chapter.  
229 The record shall be made at the time of admission from information provided by the person

230 being admitted or confined but, when it cannot be so obtained, the information shall be  
 231 obtained from relatives or other persons acquainted with the facts. The name and address  
 232 of the person providing the information shall be a part of the record."

233 **SECTION 2.17.**

234 Said chapter is further amended by revising subsection (a) of Code Section 31-10-29, relating  
 235 to privileged nature of disclosures, notification of local registrar of institutional deaths and  
 236 fetal deaths, and notification of the board of voting registrars of adult deaths, as follows:

237 "(a) Any person having knowledge or facts concerning any birth, death, spontaneous fetal  
 238 death, marriage, ~~induced termination of pregnancy~~, divorce, dissolution of marriage, or  
 239 annulment may disclose such facts to the state registrar, and such disclosure shall be  
 240 absolutely privileged and no cause or action may be brought or maintained against such  
 241 person for such disclosure."

242 **SECTION 2.18.**

243 Said title is further amended in subsection (b) of Code Section 31-32-14, relating to the effect  
 244 of certain provisions relating to living wills on other legal rights and duties, by striking the  
 245 last sentence.

246 **SECTION 2.19.**

247 Said title is further amended in subsection (c) of Code Section 33-24-59.6, relating to  
 248 prescribed female contraceptive drugs or devices and insurance coverage, by striking the last  
 249 sentence.

250 **SECTION 2.20.**

251 Said title is further amended by revising subparagraph (C) of paragraph (1) of Code Section  
 252 33-60-3, relating to definitions, as follows:

253 "(C) Coverage of testing for chlamydia in Code Section 31-17-4.1; coverage for  
 254 complications of pregnancy in Code Section 33-24-24; coverage for general anesthesia  
 255 and related hospital and outpatient facility charges for dental care for persons who are  
 256 developmentally disabled, seven or younger, neurologically impaired, or suffering  
 257 severe face or head trauma in Code Section 33-24-28.4; surveillance tests for ovarian  
 258 cancer in Code Section 33-24-56.2; colorectal cancer screening and testing in Code  
 259 Section 33-24-56.3; coverage for hospital stays after delivery in Code Section  
 260 33-24-58.2; direct access to obstetricians and gynecologists in Code Section 33-24-59;  
 261 treatment of dependent children with cancer in Code Section 33-24-59.1; coverage for  
 262 equipment and self-management training for individuals with diabetes in Code Section

263 33-24-59.2; coverage for prescribed female contraceptive drugs or devices in Code  
 264 Section 33-24-59.6, ~~provided that nothing contained in this paragraph shall be~~  
 265 ~~construed to require any insurance company to provide coverage for abortion~~; coverage  
 266 for prescription inhalers in Code Section 33-24-59.8; coverage for autism in Code  
 267 Section 33-24-59.10; coverage for mastectomy and lymph node dissection in Code  
 268 Section 33-24-72; coverage for mammograms, ~~pap~~ Pap smears, and screening for  
 269 prostate cancer in Code Sections 33-29-3.2 and 33-30-4.2; provisions concerning  
 270 mail-order pharmaceuticals in Code Section 33-30-4.3; and coverage for child wellness  
 271 exams in Code Sections 33-29-3.4 and 33-30-4.5."

#### 272 SECTION 2.21.

273 Chapter 34 of Title 43, relating to physicians, acupuncture, physician's assistants, cancer and  
 274 glaucoma treatment, respiratory care, clinical perfusionists, and orthotics and prosthetics  
 275 practice, is amended by striking and reserving subsection (l) of Code Section 43-34-26.3,  
 276 relating to delegation of certain medical acts to advanced practice registered nurses,  
 277 construction and limitations of such delegation, definitions, conditions of nurse protocol, and  
 278 issuance of prescription drug orders.

#### 279 SECTION 2.22.

280 Said title is further amended by striking and reserving paragraph (8) of subsection (a) of  
 281 Code Section 43-34-37, relating to the authority of the Composite State Board of Medical  
 282 Examiners to refuse license to or discipline physicians, restoration of licenses, enforcement  
 283 investigations, evidentiary privileges, closed hearings, immunity for reporting violations, and  
 284 when investigation or assessment of licensee's fitness to practice is required.

#### 285 SECTION 3.

286 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared  
 287 or adjudged invalid or unconstitutional by the Georgia Supreme Court, such adjudication  
 288 shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this  
 289 Act, which shall remain of full force and effect as if the section, subsection, sentence, clause,  
 290 or phrase so declared or adjudged invalid or unconstitutional were not originally a part  
 291 hereof. The General Assembly declares that it would have passed the remaining parts of this  
 292 Act if it had known that such part or parts hereof would be declared or adjudged invalid or  
 293 unconstitutional. No portion of this Act may be found to be unconstitutional by the federal  
 294 courts as they lack the subject matter jurisdiction to instruct this state how or whether to  
 295 prosecute certain crimes.

296 **SECTION 4.**

297 This Act shall become effective upon its approval by the Governor or upon its becoming law  
298 without such approval.

299 **SECTION 5.**

300 All laws and parts of laws in conflict with this Act are repealed.